



UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

INMAR ASSOCIATES, INC.,

Defendant.

CONSENT DECREE

Civil Action No. 87-144

This Consent Decree is made and entered into by and between the plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the defendant, Inmar Associates, Inc. ("Inmar").

WHEREAS, the United States alleges the following in its Complaint as stated herein:

1. That Inmar is a corporation organized and existing under the laws of the State of New Jersey;
2. That Inmar has its principal place of business located at 1703 East Second Street, Scotch Plains, New Jersey;
3. That Inmar acquired title to a portion of the real property located at 216 Paterson Plank Road, Carlstadt, Bergen County, New Jersey ("the Site") in 1969 and acquired title to the remainder of the Site in 1977;
4. That Inmar is the present owner of the Site;

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5. That there were releases and threatened releases of hazardous substances into the environment at the Site while Inmar held title to the Site;

6. That EPA, Region II, issued an Administrative Order, Index No. II CERCLA - 50115, ("the Order") to Inmar on October 23, 1985 under the authority of Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9606(a), which Order mandated that Inmar conduct certain response and removal actions at the Site within specified time periods;

7. That Inmar willfully violated and failed or refused to comply with the Order issued by the Regional Administrator, EPA, Region II, on October 23, 1985 and that Inmar is, therefore, subject to payment of penalties as provided for in Section 106(b) of CERCLA, 42 U.S.C. §9606(b);

8. That the United States incurred Costs (as defined herein) which relate to the Order; and

9. That Inmar is liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for the Costs referred to in Paragraph 8. above, and is liable for interest on such Costs, pursuant to Section 107 of CERCLA, 42 U.S.C. §9607;

WHEREAS, the parties agree that settlement of this matter is in the public interest and that entry of this decree without further litigation is an appropriate way to resolve this dispute, and, therefore, the parties consent to the entry of this decree.

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NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I

JURISDICTION

a. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, 28 U.S.C. §1345, 42 U.S.C. §§9606(b) and 9607, and 42 U.S.C. §9613(b). The court has in personam jurisdiction over the Parties hereto and this jurisdiction is affirmed by their execution of this Decree.

II

DEFINITIONS

For the purposes of this Consent Decree, the following terms are defined as follows:

a. Site means the real property located at 216 Paterson Plank Road, Carlstadt, New Jersey and which property occupies Lots 1 through 5 in Block 124 on the Tax Map of Carlstadt Township, Bergen County, New Jersey.

b. Order means the Administrative Order issued to Inmar Associates, Inc. on October 23, 1985 by the Regional Administrator of EPA, Region II, under the authority of Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., Index No. II CERCLA - 50115.

c. Hazardous substance means any substance (or any mixture containing any level(s) of any substance) which falls within the definition of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

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d. Costs mean expenses incurred by the EPA relating to the Order issued to Inmar Associates on October 23, 1985, which costs are not inconsistent with the National Contingency Plan, 40 CFR Part 300 and which costs include EPA staff salaries, legal expenses, indirect costs and contract expenses related to that Order.

e. Penalties mean the civil penalties which may be recovered by the United States under CERCLA Section 106(b), 42 U.S.C. §9606(b), for any willful violation of, or failure or refusal to comply with, an order issued by EPA pursuant to its authority under CERCLA Section 106(a), 42 U.S.C. §9606(a).

f. Complaint shall mean the Complaint filed by the United States against Inmar Associates, Inc. in Civil Action No. 87-144 in the U.S. District Court, Newark, New Jersey on January 14, 1987.

g. Trust Fund shall mean the EPA Hazardous Substances Superfund.

h. Settlement Amount shall mean the monetary payment which Inmar Associates, Inc. agrees to pay to the Trust Fund to settle the CERCLA Section 107 and Section 106(b) claims in the Complaint.

III

PARTIES BOUND

a. The provisions of this Consent Decree apply to and are binding upon Inmar, its officers, directors, agents, servants, employees, successors, and assigns and upon the United States on behalf of EPA.

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b. Each of the undersigned representatives of the United States and Inmar certify that they are fully authorized to sign and execute this Consent Decree and to legally bind the parties whom they represent to the terms and conditions of this Decree.

IV

PAYMENT OF COSTS, INTEREST AND PENALTIES TO EPA

a. Inmar will pay to the United States the sum of five hundred and forty five thousand dollars (\$545,000.00) (hereinafter referred to as "the settlement amount") within ten days after the entry of this Consent Decree.

b. Payment of the full settlement amount stated in paragraph IV.a. above shall be made by certified check in the amount of \$545,000.00 made payable to "EPA Hazardous Substances Superfund"; this check shall be sent by registered mail to the address EPA Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251 within ten days after the entry of this Consent Decree. This check shall be accompanied by a letter identifying the paying party, the court, the civil action number (87-144), and the United States Department of Justice file number (90-11-2-162). The defendant, Inmar, shall also send a notice of such payment, including a copy of the check by registered mail to both the EPA Region II and the United States Department of Justice personnel identified in the "Notices" section of this Decree on the same day such payment is mailed to the Trust Fund.

V

STIPULATED PENALTIES

a. If Inmar fails to pay the United States the full

settlement amount within ten days after the entry of this Consent Decree, Inmar shall pay the United States, in addition to the settlement amount and interest pursuant to 28 U.S.C. §1961(a), the following stipulated penalties for each and every day after that date until the entire settlement amount and all accrued interest are paid in full:

For the first 30 days of non-compliance \$500.00 per day

For each day of non-compliance thereafter \$1000.00 per day

Penalties are not payable in avoidance of interest and interest shall begin to accrue on the eleventh day following entry of this Decree on any unpaid principal on the settlement amount in addition to accrual of any stipulated penalties for late payment as set forth above.

b. Stipulated penalties due under this paragraph shall be paid by certified check, made payable to "EPA Hazardous Substances Superfund", and mailed to U.S. EPA Superfund, P.O. Box 371003M, Pittsburgh, PA 15251, within ten days after the date on which any such penalty is incurred.

c. Stipulated penalties shall be in addition to any other remedies or sanctions which may be available to the United States by reason of Inmar's failure to comply with the terms of this Consent Decree.

VI

SATISFACTION

a. Payment of the settlement amount and all accrued interest and stipulated penalties constitutes full satisfaction

for all the claims asserted by the United States against Inmar, and shareholders its officers, directors, agents and employees/ and against Transtech Industries, Inc., its officers, directors, employees and shareholders in the Complaint.

b. Payment of the settlement amount and all accrued interest and stipulated penalties constitutes full satisfaction for all the claims asserted by the United States against Inmar in the Complaint for any response costs which EPA may incur for the disposal of the one(1) container of material at the Site which is known as Tank T5.

c. Satisfaction of the claims asserted by the United States against Inmar in the Complaint shall not occur unless and until Inmar pays in full the amounts set forth in both Sections IV and V above.

VII

NOTICES

a. All notices and correspondence required to be sent to the United States under this Consent Decree shall be addressed to both of the following:

A. U.S. Environmental Protection Agency
26 Federal Plaza - Room 437
New York, New York 10278

Att: James P. Rooney, Esq.
Office of Regional Counsel

B. Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice 9th &
Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Att: Elizabeth Yu, Esq.
Environmental Enforcement Section

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VIII

CLAIMS AGAINST THE FUND

a. Inmar agrees to make no claim pursuant to Section 112 of CERCLA, 42 U.S.C. §9612, or pursuant to any other statute, common law or legal theory, either directly or indirectly, against either the United States or EPA or the Hazardous Substances Superfund established by CERCLA, for any reimbursement or liability relating to the Site. Nothing in this Consent Decree shall be deemed to constitute pre-authorization of a CERCLA claim within the meaning of 40 C.F.R. §300.25(d).

IX

RETENTION OF RESPONSE AND ENFORCEMENT AUTHORITY

a. This Consent Decree shall not be construed to limit in any manner the response and enforcement authority of the United States which exists under Federal law on any matters relating to this Site. The United States hereby explicitly retains the authority to perform any or all activities authorized under Federal or state law relating to this site.

X

COMPLIANCE WITH OTHER LAWS

a. This Consent Decree shall not be construed in any way to relieve Inmar or any other person or entity from complying with any federal, state or local law.

XI

THIRD PARTIES

a. The provisions of this Consent Decree do not limit

or affect in any manner the rights of the United States or Inmar against any person or entity which is not a party to this Consent Decree. This Consent Decree is not intended to nor will it act as a bar to, a waiver of or a release of any claim or cause of action which EPA has at present or may have in the future against any person or entity, except as to Inmar with regard to the claims alleged in the Complaint as stated herein.

XII

EFFECTIVE DATE

a. The effective date of this Consent Decree shall be the date on which the Consent Decree is entered by the United States District Court for the District of New Jersey.

XIII

RETENTION OF JURISDICTION

a. The District Court shall retain jurisdiction of this matter for the purpose of enforcing timely payment of the amounts set forth in Sections IV and V in this Consent Decree.

XIV

TERMINATION OF JURISDICTION

a. After Inmar has paid in full the amounts set forth in Sections IV and V of this Consent Decree, either party may move the Court to terminate this Consent Decree.

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United States Attorney
District of New Jersey

By:

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The Court finds that this decree is a reasonable and fair
settlement and adequately protects the public interest in
accordance with Federal law.

Dated and entered on this _____ day of _____, 1988.

United States District Judge
District of New Jersey

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